



STATE OF KANSAS

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February 14, 1984

ATTORNEY GENERAL OPINION NO. 84- 14

Morgan Metcalf
Butler County Attorney
Judicial Building
El Dorado, Kansas 67042

Re: Taxation -- Judicial Foreclosure and Sale of Real Estate
-- Initiation of Action by County; Multiple Petitions

Synopsis: K.S.A. 79-2801 authorizes the board of county commissioners to order the county attorney or county counselor to bring foreclosure actions in district court against the owners of real estate which has been purchased by the county at a delinquent tax sale and which has been unredeemed for the statutory three year period. Although the statute speaks of the filing of "an action," the determination whether to join all potential defendants into one suit rests in the discretion of the county attorney or county counselor, who may accordingly file multiple suits which may be heard separately or, at the option of the trial court, consolidated into one or more proceedings.

Cited herein: K.S.A. 1983 Supp. 77-201, Third, K.S.A. 79-2801.

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Dear Mr. Metcalf:

As County Attorney for Butler County, you request our opinion as to whether your office may properly file more than one action to foreclose on land for which the taxes are more than three years delinquent.

The relevant statute is K.S.A. 79-2801, which states in pertinent part as follows:

"In all cases in which real estate has been or shall be sold and bid in by the county at any delinquent tax sale and shall remain unredeemed on the first day of September of the third year after such sale, or any extension thereof as provided in K.S.A. 79-2401a or any amendments thereto, the board of county commissioners shall order the county attorney or county counselor and it shall be the duty of the county attorney or county counselor to institute an action in the district court, in the name of the board of county commissioners, against the owners or supposed owners of such real estate and all persons having or claiming to have any interest therein or thereto, by filing a petition with the clerk of such court"
(Emphasis added.)

You inquire whether it is necessary to file a single action naming the owners of all tracts upon which property taxes are more than three years delinquent and which have been acquired by the county at a tax sale, or, alternatively, if multiple actions can be brought.

In our opinion, there is nothing in the statute which precludes the institution of more than one action for foreclosure. This same result was reached by the Kansas Supreme Court in the case of Douglass v. Leavenworth County, 75 Kan. 6 (1907). In construing the predecessor statute to K.S.A. 79-2801, the court found that the term "action" could include more than one proceeding, a result which is consistent with K.S.A. 1983 Supp. 77-201, Third. Accordingly, the county attorney could file one or more proceedings involving different tracts of property, with the trial court retaining the power to consolidate such actions as may seem proper. 75 Kan. at 6, Syllabus 2. In that this case remains the law of this state, we believe it provides adequate basis for the filing of more than one action. Indeed, as the court noted in Douglass (75 Kan. at 9), if one action had been filed "we can only conjecture what utter confusion and interminable delays would probably have occurred had there been one hundred defendants, with separate issues as to the taxes upon as many pieces of real estate in different cities, townships, school and road districts."

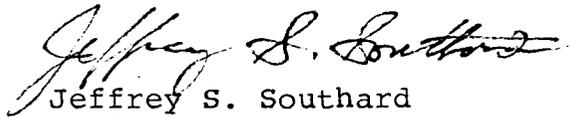
In conclusion, K.S.A. 79-2801 authorizes the board of county commissioners to order the county attorney or county counselor to bring foreclosure actions in district court against the owners of real estate which has been purchased by the county at a de-

linquent tax sale and which has been unredeemed for the statutory three year period. Although the statute speaks of the filing of "an action," the determination whether to join all potential defendants into one suit rests in the discretion of the county attorney or county counselor, who may accordingly file multiple suits which may be heard separately or, at the option of the trial court, consolidated into one or more proceedings.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JJS:crw